

DEED OF GUARANTEE

DATED

2014

MANAGEMENT & TRAINING CORPORATION

and

**THE THAMES VALLEY
COMMUNITY REHABILITATION COMPANY LIMITED**

and

THE SECRETARY OF STATE FOR JUSTICE

**in respect of the obligations of the Contractor under
the Services Agreement relating to the provision and management
of rehabilitation services in the community**

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THIS DEED OF GUARANTEE is made on

2014

BETWEEN:

- (1) **MANAGEMENT & TRAINING CORPORATION** whose registered office is at 1209 Orange Street, Wilmington, DE, 19801, State of Delaware (**Guarantor**);
- (2) **THE THAMES VALLEY COMMUNITY REHABILITATION COMPANY LIMITED** (registered in England under number 08802542), whose registered office is at Kingsclere Road, Bicester, Oxfordshire, United Kingdom, OX26 2QD (**Contractor**); and
- (3) **THE SECRETARY OF STATE FOR JUSTICE** acting as part of the Crown of 102, Petty France, London SW1H 9AJ (**Authority**).

BACKGROUND:

- (A) The Authority and the Contractor have entered into an agreement dated 2014 for the provision and management of offender services in the community (the **Services Agreement**, which term includes all variations of it from time to time in force).
- (B) The Authority has required the Contractor to procure the execution and delivery to the Authority of a guarantee substantially in the form of this deed.
- (C) The Authority and the Contractor have also entered into a deed of guarantee on identical terms to, and on the same date as, this deed with Amey UK plc (**Amey Deed of Guarantee**).

THIS DEED WITNESSES as follows:

1. Unless the contrary intention appears, words and expressions defined in the Services Agreement have the same meanings in this deed and any provision in the Services Agreement concerning matters of construction or interpretation shall also apply in this deed.
2. From the Amendment Date, the Guarantor unconditionally and irrevocably:
 - (a) guarantees to the Authority and each Authority Related Party the payment when due of all amounts payable by the Contractor under or pursuant to the Services Agreement;
 - (b) undertakes to ensure that the Contractor will perform when due all its obligations under or pursuant to the Services Agreement;
 - (c) agrees that if and each time that the Contractor fails to make any payment when it is due under or pursuant to the Services Agreement or fails to perform when due any of its obligations under or pursuant to the Services Agreement, the Guarantor must on demand (without requiring the Authority first to take steps against the Contractor or any other person) pay that amount to the Authority or the Authority Related Party or perform the relevant obligation when due as if it were the principal obligor in respect of that amount or obligation; and
 - (d) agrees that if any obligation of the Contractor is or becomes unenforceable, invalid or illegal, the Guarantor will as principal debtor and primary obligor indemnify the

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Authority and any Authority Related Party against all losses, costs and liabilities sustained by any of them as a result of the Contractor not paying any amount or performing any obligation which would, but for such unenforceability, invalidity or illegality, have been payable or performable by the Contractor under or pursuant to the Services Agreement on the date when it would have been due or required to be performed.

3. For the avoidance of doubt, and without prejudice to Clause 8, the obligations of the Guarantor under Clause 2:
 - (a) shall be no greater in value or scope than the obligations of the Contractor under the Services Agreement, save to the extent set out in Clause 2(d) and Clause 4; and
 - (b) are without prejudice to any defence, claim or other right that the Contractor may have under the Services Agreement as a matter of contract and nothing shall preclude the Guarantor from benefiting from, or otherwise relying on, those defences, claims or other rights as a matter of contract.
4. Subject to Clause 5, the aggregate liability of the Guarantor to the Authority and the Authority Related Parties under or in connection with this deed, whether arising in tort (including negligence), for breach of contract or otherwise (save for any claim for restitution) shall:
 - (a) for losses suffered or incurred in any Contract Year, be limited to the Guarantee Annual Liability Cap; and
 - (b) for losses suffered or incurred in aggregate during the Contract Period, be limited to the Guarantee Aggregate Liability Cap.

For the purpose of this clause 4:

“Guarantee Annual Liability Cap” means £10,808,000;

“Guarantee Aggregate Liability Cap” means £14,411,000.

5. Nothing in this deed excludes or limits either party's liability for a) fraud or b) death or personal injury caused by its negligence or that of its employees or agents.
6. Each payment to be made by the Guarantor under this deed must be made in the currency in which the relevant amount is payable by the Contractor free and clear of all deductions or withholdings of any kind.
7. Where the Authority is owed an amount under this deed and that amount remains unpaid for more than 20 Business Days after the due date, without limiting its other rights and remedies, the Authority may charge, and the Guarantor shall pay, interest at the statutory rate of interest from time to time under the Late Payment of Commercial Debts (Interest) Act 1998, on that amount accruing daily from (and including) the date that is 20 Business Days after the due date to (but excluding) the date of actual payment.
8. The Guarantor's obligations under this deed shall not be affected by any matter or thing which but for this provision might operate to affect or prejudice those obligations, including:

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- (a) any time or indulgence granted to, or composition with, the Contractor or any other person;
 - (b) the taking, variation, renewal or release of, or neglect to perfect or enforce the Services Agreement or any right, guarantee, remedy or security from or against the Contractor or any other person;
 - (c) any variation or change to the terms of the Services Agreement; or
 - (d) any illegality, unenforceability or invalidity of any obligation of the Contractor, so that this deed shall be construed as if there were no such illegality, unenforceability or invalidity, save that if the Services Agreement is held to be unenforceable in its entirety for a reason other than an act or omission by or on behalf of, or circumstance relating to, the Contractor, this deed shall be unenforceable.
9. The Guarantor represents and warrants to the Authority and each Authority Related Party at the Amendment Date and during the Contract Period that:
- (a) it has the power to execute and deliver this deed and to perform its obligations under it and has taken all action necessary to authorise that execution and delivery and the performance of those obligations;
 - (b) this deed constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to the availability of equitable remedies subject to the discretion of the court before which any proceedings for such remedies may be brought);
 - (c) the execution and delivery by the Guarantor of this deed and the performance of its obligations under it do not and will not violate or conflict with or constitute a default under any law, rule or regulation applicable to it, any provisions of its constitutional documents, any order or judgment of any court or other agency or government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (d) all authorisations from, and all notices or filings with, any governmental or other authority that are necessary to enable the Guarantor to execute, deliver and perform its obligations under this deed have been obtained or made (as the case may be) and are in full force and effect and all conditions of each such authorisation have been complied with; and
 - (e) all information in the Response that relates to the subject matter of this deed remains true, accurate and not misleading in all respects.
10. (a) Until all amounts which may be or become payable under the Services Agreement or this deed have been irrevocably paid in full, the Guarantor shall not as a result of this deed or any payment or performance under this deed be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Contractor or any other person or claim any right of contribution, set-off or indemnity, in each case relating to the Services Agreement.

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- (b) The Guarantor will not take or hold any security from the Contractor in respect of this deed and any security which is held in breach of this provision will be held by the Guarantor in trust for the Authority.
- 11. Neither the Authority nor an Authority Related Party shall be entitled to make a claim against the Guarantor under this deed to the extent that it has recovered, in relation to the same circumstances that gave rise to the claim, the amount of that claim under the Amey Deed of Guarantee.
- 12. The Guarantor shall reimburse the Authority for all reasonable legal and other costs (including VAT) incurred by the Authority or an Authority Related Party in connection with the enforcement of this deed.
- 13. The Guarantor shall not assign, transfer or otherwise dispose of any of its rights or transfer (including by way of novation) or otherwise dispose of any of its obligations under this deed without the prior written consent of the Authority and any such purported assignment, transfer or disposal shall be void.
- 14.
 - (a) Subject to Clause 13(b) and 13(c), no term of this deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this deed. This Clause does not apply to the Crown and does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
 - (b) The Guarantor and the Contractor acknowledge and agree that the Authority has entered into this deed and the Services Agreement for its own benefit and for the benefit of each Authority Related Party. The Authority shall enforce any provision of this deed on behalf of each Authority Related Party except to the extent that it is not able to so do as a result of Applicable Law.
 - (c) If and to the extent that the Authority is not able to recover a Loss incurred by a Commissioning Body under the provisions of this Clause in any instance where a claim to recover Loss is not, by operation of law or decision of a court, deemed to be enforceable by the Authority itself (including, for example, where it is deemed that the Authority has no standing to enforce the claim for recover of Loss for whatever reason), that Commissioning Body shall be entitled to enforce this deed against the Contractor in its own right in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 but only to the extent that those rights relate to the Services commissioned by that Commissioning Body, subject always to the liability provisions in this deed, which shall apply mutatis mutandis to claims made by the Commissioning Body and even though the relevant Clause may be silent as to which person is intended to have the benefit of the relevant obligation, refer only to the Authority or not specifically identify a Commissioning Body.
- 15.
 - (a) Any notice to or demand on the Guarantor to be served under this deed may be delivered or sent by first class post to the Guarantor at its address appearing in this deed or at any other address as it may have notified to the Authority in accordance with this clause.
 - (b) Any notice or demand shall be deemed to have been served:
 - (i) if delivered, at the time of delivery; or

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- (ii) if posted, on the second Business Day after it was put into the post.
 - (c) In proving service of a notice or demand, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class letter or that the fax was properly addressed and transmitted, as the case may be.
- 16.
- (a) This deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
 - (b) The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute relating to any non-contractual obligations arising out of or in connection with this deed) and the Guarantor submits to the exclusive jurisdiction of the English courts.
 - (c) The Guarantor irrevocably appoints Jordans Trust Company Limited, 21 St Thomas Street, Bristol BS1 6JS as its agent in England for service of process.

IN WITNESS of which the Guarantor has executed and delivered this deed on the date which appears first on page 1.

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EXECUTED as a **DEED** by **MANAGEMENT & TRAINING CORPORATION**
acting by

.....
Agent

in the presence of:

Witness's Signature

Name:

Occupation:

Address:

.....

EXECUTED as a **DEED** by **THE THAMES VALLEY COMMUNITY REHABILITATION COMPANY LIMITED**

acting by

a director

in the presence of:

Director

Witness's Signature

Name:

Address:

.....

THE CORPORATE SEAL of
THE SECRETARY OF STATE FOR JUSTICE

hereunto

affixed is authenticated by:

.....
Signature
Authorised by
THE SECRETARY OF STATE FOR JUSTICE